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10/774,339	02/06/2004	Eugene A. Helmsie	60,137-207;136-3032-U	5319
83074 7590 07/28/2011 Carlson, Gaskey & Olds/Masco Corporation 400 West Maple Road Suite 350 Birmingham, MI 48009				
EXAMINER				
LE, HUYN D				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte EUGENE A. HELMETSIE, HARPER F. ZARKER, JR.,
and TOMASZ PRACEL¹

Appeal 2011-008214
Application 10/774,339
Technology Center 3700

Before WILLIAM F. PATE, III, DANIEL S. SONG, and
KEN B. BARRETT, *Administrative Patent Judges*.

SONG, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ The real party in interest is Masco Bath Corporation, owned by Masco Corporation (App. Br. 1).

The Appellants appeal under 35 U.S.C. § 134 from a Final Rejection of claims 18 and 21-33 which are the pending claims of the application (App. Br. 1). In addition to the Appeal Brief, the Appellants also rely on a Reply Brief in support of patentability. This application was subject of a prior appeal before the Board in which the Examiner's rejection of the claims was affirmed. *Ex parte Helmsie et al.*, 2009 WL 3127440, 12 (BPAI 2009) (hereinafter "Prior Decision"). We have jurisdiction over this appeal under 35 U.S.C. § 6(b).

The claimed invention is directed to a shower surround. Claim 18, the sole independent claim on appeal, reads as follows (Claims App'x.):

18. A shower surround comprising:
 - a base portion;
 - a first wall portion;
 - a second wall portion; and
 - a corner portion engaged with said base portion, said first wall portion and said second wall portion, said corner portion comprising a multiple of horizontal shelf slots arranged vertically along a length of said corner portion, wherein said horizontal shelf slots comprise blind openings of uniform height that extend into said corner portion to support a corresponding multiple of shelves, wherein the base portion receives the first wall portion, the second wall portion, and the corner portion.

The Examiner rejects the claims as follows:

1. Claims 18, 21-27, 30 and 33 under 35 U.S.C. § 102(b) as anticipated by Armstrong (U.S. Pat. No. 2,036,184 issued Apr. 7, 1936).
2. Claim 28 under 35 U.S.C. § 103(a) as unpatentable over Armstrong in view of Hine (U.S. Pat. No. 1,059,464 issued Apr. 22, 1913).

3. Claim 29 under 35 U.S.C. § 103(a) as unpatentable over Armstrong in view of Kitamura (U.S. Pat. No. 4,718,131 issued Jan. 12, 1988).
4. Claims 31 and 32 under 35 U.S.C. § 103(a) as unpatentable over Armstrong in view of Kersten (U.S. Pat. No. 5,768,721 issued Jun. 23, 1998).²

We REVERSE.

PRINCIPLES OF LAW

To establish anticipation, every element and limitation of the claimed invention must be found in a single prior art reference, arranged as in the claim. *Karsten Mfg. Corp. v. Cleveland Golf Co.*, 242 F.3d 1376, 1383 (Fed. Cir. 2001).

ANALYSIS

Anticipation rejection over Armstrong

The Examiner rejects claims 18, 21-27, 30 and 33 as lacking novelty over Armstrong which describes a corner shelf of the type adapted to be mounted in a corner portion of a room (p. 1, col. 1, ll. 1-10). The Examiner states that Armstrong discloses a surround that is "capable of being used in a bathroom or shower surround," and discloses "a base portion (a floor portion of a room); a first wall portion (the left wall of the room); a second wall portion (the right wall of the room); and a corner portion (formed by the

² This rejection was set forth in the Office Communication of April 25, 2011 (hereinafter "Off. Comm.") which corrects the Grounds of Rejection in the Examiner's Answer of March 1, 2011 (hereinafter "Ans.").

meeting portions of the walls including member 1) engaged with the base portion." (Off. Comm. 1).

The Appellants argue, *inter alia*, that the floor of Armstrong does not "receive" the wall portions or the corner portions as specifically recited by the sole independent claim (App. Br. 3). We agree with the Appellants. The claims require the base portion to receive the first wall portion, the second wall portion, and the corner portion. Armstrong does not provide any disclosure with respect to the juncture between the walls and the floor, and in our view, the claims require more than mere support of the walls by the surface of the floor. Thus, we do not sustain the Examiner's anticipation rejection of claim 18 and claims 21-27, 30 and 33 that ultimately depend from claim 18. While the Examiner and the Appellants also disagree regarding whether the preamble limits the claims (Off. Comm. 1; Reply Br. 1-2), this issue is moot.

Obviousness Rejections

The Examiner's obviousness rejections of dependent claims 28, 29, 31 and 32 are based on the erroneous finding that Armstrong anticipates claim 18 from which these claims ultimately depend (Off. Comm. 1-2). The Examiner's applications of Hine, Kitamura and Kersten (Off. Comm. 1-2) do not remedy the noted deficiency of Armstrong. Therefore, we also do not sustain the Examiner's obviousness rejections of dependent claims 28, 29, 31 and 32.

REVERSED

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